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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA  
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7 JUDY COHN, ) 2:10-cv-01397-ECR-VCF  
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9 Plaintiff, )  
10 vs. ) Order  
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12 MICHAEL J. ASTRUE, Commissioner of )  
13 Social Security, )  
14 Defendant. )  
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14 On November 3, 2011, the Magistrate Judge filed a Report and  
15 Recommendation (#19), recommending that the Court affirm the  
16 Administrative Law Judge's ("ALJ") decision and deny Plaintiff's  
17 Motion to Remand (#13).

18 Plaintiff filed objections to the Report and Recommendation  
19 (#22), specifically challenging the Magistrate Judge's consideration  
20 of the lay witness statement by Plaintiff's friend, Ellen Hainey.  
21 Ms. Hainey's letter was not submitted until after the ALJ held the  
22 hearing on this matter, and the ALJ did not specifically address the  
23 lay witness testimony. Ms. Hainey's letter was considered by the  
24 Appeals Council, however, which found no basis to change the ALJ's  
25 decision. The ALJ's conclusions are not inconsistent with Ms.  
26 Hainey's letter. For these reasons, the Magistrate Judge concluded  
27 that if Ms. Hainey's letter was mistakenly omitted from the record,  
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1 the error was harmless under Stout v. Commissioner, 454 F.3d 1050,  
2 1054-1057 (9th Cir. 2006).

3 When an ALJ fails to address lay witness testimony, a  
4 heightened harmless error standard applies, such that "a reviewing  
5 court cannot consider the error harmless unless it can confidently  
6 conclude that no reasonable ALJ, when fully crediting the testimony,  
7 could have reached a different disability determination." Stout,  
8 454 F.3d at 1056. We agree with the Magistrate Judge's  
9 determination that Ms. Hainey's letter is not inconsistent with the  
10 ALJ's decision and therefore a failure to address it was harmless.

11 Plaintiff did not object to the other findings and  
12 recommendations of the Report and Recommendation (#19). The Report  
13 and Recommendation (#19) is well-taken, and is therefore **APPROVED**  
14 **AND ADOPTED**.

15 The ALJ's decision is **AFFIRMED**, and Plaintiff's Motion to  
16 Remand (#13) is **DENIED**.

17 The Clerk shall enter judgment accordingly.  
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20 DATED: April 13, 2012.

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22 UNITED STATES DISTRICT JUDGE  
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